

**FRANK J. DEVEAU**  
Direct: (317) 713-3520  
fdeveau@taftlaw.com

966047

January 22, 2021

## **Via Email and US Postal Service**

U.S. Environmental Protection Agency  
Dion Novak, Remedial Project Manager (SR-6J)  
77 West Jackson Boulevard  
Chicago, IL 60604

Re: Sally Vance response to Special Notice Letter re Franklin Street  
Groundwater Site

Dear Mr. Novak:

Our firm represents Sally Vance in relation to EPA's November 24, 2020<sup>1</sup>, Special Notice of Liability letter ("SNL") regarding 780 Brookside Drive, Spencer, Indiana (the "BSC Site") and the Franklin Street Groundwater Site ("Franklin St. Site").

Sally Vance is declining EPA's invitation to participate in funding an RI/FS for the Franklin St. Site and to reimburse EPA for its past costs. As explained more fully below, there are a number of reasons why Sally Vance has no liability with respect to the Franklin St. Site.

## **Background**

James and Sally Vance began a business named Van-Tec, Inc. ("Van-Tec") that manufactured disposable urological products at the BSC Site in the 1980s. These devices included stents, dilators and stem retrieval baskets for kidney stones. The Vances owned the BSC Site and leased it to Van-Tec until 1988 when Van-Tec was purchased by Boston Scientific Corp. ("BSC"). The Vances continued to lease the BSC Site to BSC until 1997 when title was transferred to the Sally Vance and James Vance Trusts (the "Trusts"). The Trusts continued to lease the BSC Site to BSC until 2004 when the Trusts assigned their interests to the Sally M. Vance Trust ("Sally Vance Trust"). The Sally Vance Trust continued the lease with BSC until 2005 when it

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<sup>1</sup> We did not receive a copy of the SNL until December 11, 2020, when Nicole Wood emailed it to me.

assigned its interest to SMV Realty, LLC. SMV Realty continued the lease with BSC until December 28, 2017, when title to the realty was transferred to TBH LLC ("TBH"). TBH currently continues to lease the site to BSC.

The following Phase I Environmental Site Assessments of the BSC Site have been performed since operations began in 1986:

- October 29, 1990, ATEC Phase I ESA
- August 27, 1993, ATEC Phase I ESA
- November 11, 1996, ATEC Phase I ESA
- November 29, 2018, Wilcox Environmental Phase I ESA.

Each of the Phase I assessments included a thorough inspection of the BSC Site and BSC's operations and waste handling practices. None of the Phase I reports revealed any recognized environmental conditions or other activity indicating impacts to the environment had occurred.

The Franklin St. Site was listed on the NPL in 2018 because of contamination detected in municipal wells operated by the Bean Blossom/Patricksborg Water Corporation. Tetrachloroethylene ("PCE") was first detected in the wellfield in 2011. A treatment system consisting of air strippers was added in 2016-2017 which has eliminated any trace of VOCs in finished water. The wellfield is approximately 1 mile away from the BSC Site.

BSC has reported that it has no record of ever using PCE or trichloroethylene at the BSC Site.

### **Sally Vance is not liable under CERCLA**

For Sally Vance to be liable for contamination at the Franklin St. Site two conditions must be met. First, she must have owned the BSC Site at a time when contaminants were released. Second, those same contaminants must have reached the Franklin St. Site.

#### **(1) There were no releases of PCE when Sally Vance owned the BSC Site or at any other time.**

Here there is no evidence that there have ever been any releases of contaminants at the BSC Site into the environment, let alone when Sally Vance was the owner. Van-Tec's and BSC's operations involved clean, light industrial manufacturing. Manufacturing medical devices requires a hygienic, controlled sanitary environment. Both Sally Vance and BSC reported in their respective Section 104(e) responses that they have no knowledge of any contaminant releases or spills to the environment.

Similarly, the four Phase I ESAs performed at the BSC Site from 1990 through 2018 show no evidence of contamination at or emanating from the facility.

**(2) Even if there had been a release, there is no evidence any contaminants have ever left the BSC Site.**

The only testing done to date shows no evidence of contamination in groundwater leaving the BSC Site. The only “evidence” is presented in the Affidavit of Nick Cooper (“Cooper Affidavit”) which was relied upon by EPA in preparing the SNL. In the Cooper Affidavit, it shows that monitoring well E2W52, directly down gradient of the BSC Site, was non-detect for chlorinated VOCs like PCE, which has been found in groundwater at the Franklin St. Site.<sup>2</sup> Well E2W52 was also designated as a “Background” sample in EPA’s January 2018 HRS Documentation Record (“HRS Report”) because it was outside the Franklin St. Site presumed groundwater plume. The BSC Site is even further removed from the Franklin St. Site plume and never should have been included by EPA as a potential source.

Given the complete absence of evidence of releases to the environment from the BSC Site, or evidence of any contamination migrating from the BSC Site, Sally Vance cannot be liable for conditions at the Franklin St. Site.

**The Franklin St. Site was most likely contaminated by releases from historic dry cleaner operations**

The Cooper Affidavit and the HRS Report strongly suggest the source of contamination at the Franklin St. Site was historic releases from dry cleaners near the municipal wellfield. The BSC Site is far beyond the 10-year groundwater time of travel established by Indiana’s Wellhead protection program. Several other sources, including former dry cleaners, are within the 5 and 10-year time of travel areas. It is common knowledge that dry cleaners have historically used and released PCE in their operations. EPA’s efforts to find a source should be focused on known users of PCE, like dry cleaners, who are notorious for contaminating groundwater.

There is a literal “laundry list” of dry cleaners within the 5-year time of travel of the municipal wellfield, including: Ranard’s Cleaners, Miller Cleaners, Dunigan Cleaners, Richardson Cleaners, Spencer Coin Laundry and Owen Valley Cleaners. Moreover, these dry cleaners operated from 1948 until 2003. Thus, their operations took place during an unregulated 30-year period of time when dumping PCE out the back door was not illegal. Clearly, the source of PCE in the wellfield is obvious and it is not the BSC Site.

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<sup>2</sup> The Cooper Affidavit states that the sample was analyzed outside of the applicable holding time. Nevertheless, it is the only piece of evidence that exists regarding groundwater near the BSC Site.

## Conclusion

Mrs. Vance has no CERCLA liability because there is no evidence of any contaminant releases during the time she owned the BSC Site or at any other time.

Mrs. Vance has no CERCLA liability because there is no evidence that the BSC Site is a source of contaminated groundwater migrating to the Franklin St. Site.

Mrs. Vance is an elderly woman who is in poor health and suffers from Alzheimer's disease. Mrs. Vance's family should not be subject to EPA's unnecessary and unfounded allegations. EPA should do the right thing and withdraw the SNL, or at least, acknowledge in writing that it agrees there is no basis for CERCLA liability with respect to Mrs. Vance.

Sincerely,

A handwritten signature in black ink, appearing to read "Frank J. Deveau". The signature is fluid and cursive, with the first name "Frank" being more prominent.

Frank J. Deveau

FJD/lg

cc: Karen Vance  
Nicole Wood